

**FILED**

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Board of Vocational Nursing  
and Psychiatric Technicians

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8 **BEFORE THE**  
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. VN-2011-231

12 **MISTY M. POPE,**  
13 **aka MISTY M. GILBERT**  
14 **1301 Scott Avenue, Apt. 32**  
**Clovis, California 93612**

**A C C U S A T I O N**

15 **Vocational Nurse License No. VN 182190**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation solely  
20 in her official capacity as the Executive Officer of the Board of Vocational Nursing and  
21 Psychiatric Technicians ("Board"), Department of Consumer Affairs.

22 2. On or about September 24, 1997, the Board issued Vocational Nurse License Number  
23 VN 182190 to Misty M. Pope, also known as Misty M. Gilbert ("Respondent"). Respondent's  
24 vocational nurse license was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on April 30, 2013, unless renewed.

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**STATUTORY PROVISIONS**

3. Business and Professions Code ("Code") section 2875 provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

4. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under Code section 2892.1, the Board may renew an expired license at any time within four years after the expiration.

5. Code section 2878 states, in pertinent part:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

(a) Unprofessional conduct . . .

. . . .

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction . . .

6. Code section 2878.5 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

. . . .

(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof . . .

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1           7.     Code section 2878.6 states:

2                     A plea or verdict of guilty or a conviction following a plea of nolo  
3                     contendere made to a charge substantially related to the qualifications, functions and  
4                     duties of a licensed vocational nurse is deemed to be a conviction within the meaning  
5                     of this article. The board may order the license suspended or revoked, or may decline  
6                     to issue a license, when the time for appeal has elapsed, or the judgment of conviction  
7                     has been affirmed on appeal or when an order granting probation is made suspending  
8                     the imposition of sentence, irrespective of a subsequent order under the provisions of  
9                     Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty  
10                    and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing  
11                    the accusation, information or indictment.

12           8.     Code section 490, subdivision (a), states:

13                    In addition to any other action that a board is permitted to take against a  
14                    licensee, a board may suspend or revoke a license on the ground that the licensee has  
15                    been convicted of a crime, if the crime is substantially related to the qualifications,  
16                    functions, or duties of the business or profession for which the license was issued.

#### 17                                   **COST RECOVERY**

18           9.     Code section 125.3 provides, in pertinent part, that the Board may request the  
19                    administrative law judge to direct a licentiate found to have committed a violation or violations of  
20                    the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
21                    enforcement of the case.

#### 22                                   **FIRST CAUSE FOR DISCIPLINE**

##### 23                                   **(Criminal Conviction)**

24           10.    Respondent is subject to disciplinary action pursuant to Code sections 2878,  
25                    subdivision (f), and 490, subdivision (a), in that on or about July 6, 2011, in Fresno County  
26                    Superior Court, Case No. M11914252, Respondent pled nolo contendere to violating Vehicle  
27                    Code section 23152, subdivision (b) (driving with a 0.08 percent or higher blood alcohol level), a  
28                    misdemeanor, a crime substantially related to the qualifications, functions, and duties of a  
                    licensed vocational nurse. Respondent also admitted that her blood alcohol level at the time of  
                    the incident, described below, was 0.19 percent, and that she had previously been convicted of the  
                    above offense on April 16, 2008 (Fresno County Superior Court, Case No. M07928242). The  
                    circumstances of the crime are as follows: On or about February 9, 2011, an officer with the  
                    Fresno Police Department ("FPD officer") arrived on the scene of an "FSO failure to yield" with a

1 possible DUI driver. The FPD officer contacted Deputy B., who initiated the traffic stop. Deputy  
2 B. informed the FPD officer that he had attempted to stop Respondent for nearly colliding with  
3 his patrol vehicle (Respondent was driving a Ford Taurus in the #2 lane on Clovis Avenue and  
4 began drifting into Deputy B.'s lane). Deputy B. activated his emergency lights and siren, but  
5 Respondent did not yield. Assisting deputies blocked Respondent's vehicle on Clovis Avenue  
6 and Shields. Respondent would not comply with orders, so the driver's side window was  
7 shattered so that Respondent could be detained. Deputy B. saw that Respondent had objective  
8 symptoms of intoxication and requested the FPD officer's assistance for a DUI investigation.  
9 When the FPD officer contacted Respondent, she admitted that she drank too much, was "under  
10 the influence", and had consumed 3 "vodka tonics". The FPD officer observed that Respondent  
11 had a strong odor of an alcoholic beverage on her breath, her speech was slow and slurred, and  
12 her eyes were bloodshot and watery. Respondent complained that she had to urinate. Before the  
13 FPD officer could escort Respondent across the street to use the restroom at a mini mart,  
14 Respondent pulled her pants down and urinated in a nearby field in public view.

### 15 **SECOND CAUSE FOR DISCIPLINE**

#### 16 **(Use of Alcoholic Beverages to an Extent or in a Manner**

#### 17 **Dangerous or Injurious to Oneself and Others)**

18 11. Respondent is subject to disciplinary action pursuant to Code section 2878,  
19 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2878.5,  
20 subdivision (b), in that on or about February 9, 2011, Respondent consumed alcoholic beverages  
21 to an extent or in a manner dangerous or injurious to herself, others, and the public, as set forth in  
22 paragraph 10 above.

### 23 **THIRD CAUSE FOR DISCIPLINE**

#### 24 **(Criminal Conviction Involving Consumption of Alcoholic Beverages)**

25 12. Respondent is subject to disciplinary action pursuant to Code section 2878,  
26 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2878.5,  
27 subdivision (c), in that on or about July 6, 2011, Respondent was convicted of a criminal offense  
28 involving the consumption of alcohol beverages, as set forth in paragraph 10 above.

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